jects for the exercise of police power. Although this doctrine has been repeatedly reaffirmed since so clearly enunciated by Chief Justice Marshall in *Marbury v. Madison*, 1 Cranch (U. S.), 178, yet social and class legislation is continuously appearing headed with titles declaring its purpose to be to promote the public health.

In considering whether or not the statute under consideration was one which affected the public generally, the court decided that it was not because it gave the person to be benefited an option. He could have the upper berth thrown back or not at pleasure. The court was clearly right here because it is contrary to the whole theory of the exercise of the police power in protection of health, that the recipient of the intended benefit should receive it or not as he wishes. Imagine a statute forbidding factory owners from employing women more than ten hours a day unless such women wished to work that long. It is absurd. The benefit is not intended to accrue to the individual as such but to the public at large through the individual. *In re Jacobs*, 98 N. Y. 98; *Holden v. Hardy*, 169 U. S. 366.

The court furthermore decided that even though such a statute did promote to some degree the public health, yet the benefit obtained thereby was very slight in proportion to the restraint and requirement imposed upon the owners of sleeping cars. Therefore the law was an unwarranted interference with property rights. In reaching this conclusion the court applied the recognized test of "reasonableness." In fact this word, "reasonableness," is the keystone of the whole doctrine of police power. The final question asked by our courts about any police power legislation is as to whether or not it is reasonable. *Bessette v. People*, 193 Ill. 334; *Health Department v. Rector*, 145 N. Y. 32; *Minneapolis, etc. Ry. Co. v. Minnesota*, 186 U. S. 268; *Southern Ry. Co. v. McNeil*, 155 Fed. 756. But what is unreasonable at one time may be reasonable at another. Circumstances change and public opinion, which must eventually find expression in the opinions of our judges, also changes. Hence the law of police power is variable and yields to the changing conditions of society. We see greater power in this respect readily conceded to the most democratic of governments to-day than despotic governments would have dared to claim in former times.

This great broadening of the scope of the state's police power in recent years has been a convenient cloak under which to rush through our state legislatures much poorly considered and unduly oppressive class legislation. The Wisconsin case under discussion is one more authority to help stem this tide of impulsive and ill-conceived legislation.

EFFECT OF FAILURE OF FOREIGN CORPORATION TO COMPLY WITH STATUTORY REQUIREMENTS

Can a foreign corporation, which has not complied with the requirements of the statutes of another state, recover from an agent in that state on his promisory note? The Supreme Court

of Minnesota has answered this question in the negative, in *Thomas Mfg. Co. v. Knapp*, 112 N. W. 989, mainly on the ground that the broad and controlling principles of public policy should not be subverted to that rule of private law which forbids an agent to question the right of his principal to money collected by him for his principal.

The fundamental proposition that a corporation has no existence beyond the limits of the sovereignty which created it, is well settled and admits of no question. Having only this existence and no absolute right of recognition in other states, but depending for such recognition and enforcement of its contracts upon their assent, it follows as a matter of course, that such assent may be granted upon such terms and conditions as those states may think proper to impose; they may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion. These statutory provisions are police regulations intended to protect people and property in one state against spurious and irresponsible companies and it is plainly their intent to compel all such companies to comply with local laws and submit to our courts. Such statutes make compliance with them a condition precedent to entering into lawful contracts in that state *In re Comstock*, 3 Sawyer, 218; *Seamans v. Christian Bros. Mill Co.*, 66 Minn. 205.

There is a general proposition that if a foreign corporation fails to comply with the laws of a state, such as filing a certificate of the amount of the corporation's capital, or recording the appointment of an authorized agent on whom process may be served, the contracts which are made are not void, but action thereon is merely suspended until compliance with the statutes. This interpretation rests on the theory that the object of these laws is rather to induce the observance of the conditions, than to accomplish the forfeiture of a right of action belonging to a foreign corporation. *Carson Rand Co. v. Stern*, 129 Mo. 387; *Goddard v. Crefield Mills*, 75 Fed. 818; *Nat'l Mut'l. Fire Ins. Co. v. Pursell*, 10 Allen, 231. But it is interesting to note that Minnesota has taken the contrary view, with the result that a foreign corporation which has not complied with the statutes, at the time the contract was consummated, will not be allowed to maintain an action on the contract even though the requirements are met after the suit is begun. *Heileman Brewing Co. v. Peimeisl*, 85 Minn. 121. Minnesota has evidently favored the strict construction of such statutes, as being for the best interests of its citizens and tending to prevent litigation on contracts made in disregard of the law.

The defendant in this suit had ordered goods of one of the company's agents and it was found that he himself was an agent with certain clearly defined powers and duties. For these goods the defendant had given his promissory note and the plaintiff sued to recover thereon. The defense, the truth of which was not contested, was that the corporation had not complied with the

laws of Minnesota, which would prohibit it from maintaining the action, and the note was held unenforceable. That the agent had in turn sold the goods does not appear, but the court said the result would be the same, whether the suit were on a promissory note or for money had and received to the use of the principal.

The authority most nearly in point, and that relied upon by the plaintiff, is *United States Express Co. v. Lucas*, 36 Ind. 361, which allowed the principal to recover under similar circumstances. In the course of the opinion, the court observed: "We doubt very much whether the legislature intended, in the enactment of the statute in question, to produce or sanction any such consequences as that the agent, after having received the money, and after the transaction between the principal and third persons was completed, should be allowed to repudiate the agency and keep the money, applying it to his own use. The obligation of the agent to account for the money is separate and distinct from the contracts of the company with third persons, which were the subject matters of the statute. To hold that the agent is not bound to account for the money is to sanction an act of the grossest dishonesty, and bad faith on the part of the agent, without the accomplishment of any equivalent benefit to any one, or to the public. 'The contract of the agent to pay is not immediately connected with the illegal transaction; but it grows out of the receipt of the money for the use of the principal who may recover. *Story on Agency*, § 347." This seems to suggest that the illegality existed as between the corporation and third persons, and not as between the corporation and its agents; but where the statute expressly says, as does the Minnesota statute, that without compliance with the named requirements, no suit may be maintained on any demand, whether arising out of contract or tort, the result would seem to be clear that as to the corporation, there is no distinction between agents or third persons.

The court said further: "We think the agent is estopped to dispute the principal's title to money which he has received for him. A tenant cannot dispute the title of the landlord—a bailee cannot dispute the title of the bailor; especially he cannot set up title in himself. Why should an agent be allowed to place himself in a position of hostility to his principal and himself claim that which he has received for him?" But this question is answered by the Minnesota court thus: "The question is not what the agent, as between himself and his principal, should be permitted to do, but what the delinquent corporation is permitted to do, by the laws of the state."

There are numerous authorities which show that when the principal employs an agent, he contracts both for his zeal in the employment and vigilance to the exclusive advantage of the employer; so that the agent cannot make himself an adverse party. *Brooks v. Martin*, 2 Wall 70; *Murray v. Vanderbilt*, 39 Barb. 140. There is also a distinction, made in England, as to the actual receipt of the money by the agent; the rule being

that if the money has been actually paid to the agent, the principal may recover—not because it completes an illegal contract, but when the contract is at an end the agent, whose liability arises solely from the fact of having received money for another's use, can have no pretense to retain it. But if the agent has not actually received the money, but has debited himself with the amount in his account, to pay it to his employer, that will not enable the latter to support an action for money had and received to his use. *Paley on Agency*, p. 62. This distinction does not seem to be so carefully drawn in this country, but *United States Express Co. v. Lucas*, *supra*, tends to support the first part of the rule, although this would not be approved by the case under review.

A more recent text book writer has said: "If the main object for which the agent is employed is legal, yet if by the terms of the contract, and as a part of it, the agent is to act in an illegal character or manner in another part of the transaction, the whole contract is contaminated thereby, and the agent can recover no compensation even for his legal acts under the contract. Neither can the principal enforce any of his obligations; for the law will not assist any persons in evading the obligations imposed upon the whole community to conform to its direction and prohibitions, and as between the principal and his agent, the guilt is deemed to be equal. *In pari delicto, potior est conditio defendentis.* Therefore they must trust exclusively to the personal faith of each other as to the fulfilment of their mutual stipulations in illegal transactions." *Story on Agency*, § 195; 344.

That the Minnesota court has taken the stronger position on this question, we feel sure; not that agents should be allowed to retain moneys justly and morally belonging to their principals, but that, since statutes of this kind are neither onerous nor oppressive, corporations should not first entirely neglect to comply therewith, and then endeavor to do the very thing the law has forbidden. Compliance with these statutes is a mark of good faith, which opens the doors of the courts to the painstaking, and justly closes them to the careless and delinquent.